

Town and County of Nantucket  
Board of Selectmen • County Commissioners

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C. Elizabeth Gibson  
Town & County Manager

April 6, 2016

Nantucket Zoning Board of Appeals  
2 Fairgrounds Road  
Nantucket, MA 02554

Re: Surfside Commons 40B Comments

Applicant: Surfside Commons LLC c/o Atlantic Development  
Project: Surfside Commons in Nantucket/56 rental units on 2.5 acres  
Location: 106 Surfside Road, Nantucket, MA  
Subsidizing Agency: Massachusetts Housing Partnership

Dear Members of the Zoning Board of Appeals:

On April 6, 2016, the Board of Selectmen reviewed the pending application by Surfside Commons LLC for a comprehensive permit for 2.5 acres of land at 106 Surfside Road ("Property") to construct 56 rental units (with 14 affordable units) in 4 residential buildings, with 122 bedrooms, 100 parking spaces and a clubhouse with a pool on (the "Project"); and the Board of Selectmen voted 4 to 0 to recommend to the Zoning Board of Appeals that any grant of a comprehensive permit shall be conditioned upon the following requirements:

- (1) **Sewer District Issue.** Since the Property is not in a municipal sewer district, legislative action, which the ZBA has no jurisdiction to take, would be required to include the Property, and any comprehensive permit relief should be conditioned upon the requirement that the necessary legislative action shall be taken before any connection is made.

The Zoning Board of Appeals should carefully review the following documents:

- St. 2008, c.396, special legislation that provides for creation and alteration of municipal sewer district only through legislative action;

- Nantucket Code, Chapter 41-3, which established municipal sewer districts using St. 2008, c.396 in 2010 (i.e., 2010 ATM approval of Article 31 on June 17, 2010);
- Nantucket Sewer Districts Town and Siasconset Map, as amended through April 2015, which shows the municipal sewer districts and that the Property is outside the municipal sewer districts; and
- Nantucket CWMP, the Town's 20-year wastewater planning document, which does not include the Property.

As the Zoning Board of Appeals is well aware, in 2008, the General Court enacted legislation (St. 2008, c.396) that authorized Nantucket to create municipal sewer districts through Town Meeting legislation. In 2010, Nantucket Town Meeting used St. 2008, c.396 to adopt a by-law that created municipal sewer districts that can be altered only through Town Meeting Action. The Property is not in a municipal sewer district.

Since the 2010 adoption of the sewer district by-law under St. 2008, c.396, Nantucket has undertaken extensive sewer planning and now has a 20-year comprehensive wastewater plan. The careful and comprehensive planning undertaken by the Town has resulted in sewer districts that are carefully aligned with Town Overlay District properties, past 40B developments, and needs areas that were identified in the Comprehensive Wastewater Management Plan approved by the Town. The Property is not currently in a sewer district and there is no plan to extend a municipal sewer district to the Property within the next 20 years.

St. 2008, c.396, §1 expressly provides that, once Town Meeting establishes sewer districts, "No other sewers shall be constructed in any public roads or ways of the town which are not within the limits of such designated sewer districts and which are not under the control of the sewer commission." As a result of the enactment of St. 2008, c.396 (Exhibit 1) and the establishment of municipal sewer districts by Town Meeting (Exhibit 2), the ZBA does not have jurisdiction to extend a municipal sewer district to the Property as the ZBA cannot take the Town Meeting action that is mandated by the General Court as required in order to extend a municipal sewer district. Zoning Board of Appeals of Groton v. Housing Appeals Committee, 451 Mass. 35, 41 (2008)(G.L. c.40B provides no authority for the Housing Appeals Committee to override the requirement for town meeting authorization as established by the Legislature.)

Since the Property is not located in a municipal sewer district or a needs area and the ZBA does not have jurisdiction to take the legislative action necessary to include the Property within a sewer district, the Project cannot connect to municipal sewer without future legislative action. Since the Project proposes to site 4 residential buildings, a pool, a clubhouse, 100 parking spaces and access

ways on 2.5 acres of land, the Property is not feasible without access to municipal sewer, so any grant of a comprehensive permit should be conditioned upon the requirement that the Applicant seek and obtain the necessary legislative action to add the Property to a municipal sewer district.

- (2) **Sewer Costs.** If the Property obtains the legislative action needed to be included in a sewer district, the Applicant should be required to pay attendant sewer connection costs and fees.
- (3) **Water Infrastructure.** The Property is not served by municipal water and an on-site well appears not to be feasible and if municipal water infrastructure is extended to the Property to serve the Project, the Applicant should be required to pay all attendant water connection costs and fees.
- (4) **Wellhead Protection District Issues.** The Property is located in the Lower Nantucket Wellhead Protection District (DEP Zone II) and, during the public hearing, all of the requirements in Zoning By-law (“ZBL”) §139-12B should be carefully examined and the Project and any waivers requested for the Project should be specifically and carefully peer reviewed.

The Board of Selectmen urges that the Zoning Board of Appeals not grant any waiver of any requirement that is designed to protect local and municipal water supplies.

- **ZBL §139-12B.2(q):**

Since the Project proposes impervious surfaces for 70% of the Property, the Zoning Board of Appeals must carefully review this proposal in light of the prohibitions and requirements set forth under ZBL §139-12B.2(q), which prohibits any land use in this district, including all buildings and accessory structures, that would result in impervious surfaces of more than 2500 s.f. or 15% of a lot, whichever is greater, unless an a system for artificial recharge of 95% of annual precipitation is provided that will not result in the degradation of groundwater quality.

Specifically, under ZBL §139-12B.2(q), the Zoning Board of Appeals may and should require the Applicant to provide evidence of groundwater protection, including the history of treatment effectiveness of the proposed design/treatment technology proposed and may require monitoring of on-site, pre-and post-development ground water quality for potential pollutants.

- **ZBL §139-12B.3(a):**

A determination must be made as to whether the Project triggers the thresholds would result in the requirement for a water compliance finding under ZBL §139-12B.3. That determination should be made in consultation with the Wannacomet

Water Company. If the Project triggers the requirement for the finding, then the finding must be made, either by the Zoning Board of Appeals under G.L. c.40B, in consultation with the Wannacomet Water Company, or, if the applicant agrees, the Applicant could go directly to the Wannacomet Water Company for the review.

- **ZBL §139-12B.3(c):**

Since the Project proposes a new nonconforming use for the Water Protection District, the Project should undergo the review required under ZBL §139-12B.3(c), with the Zoning Board of Appeals acting for the Planning Board, to make the finding that Project shall be constructed and managed in a way that will eliminate threats to the aquifer through the proposed life of the use and structures proposed. While the special permit requirement does not apply under G.L. c.40B, the Zoning Board of Appeals should impose any conditions that are reasonably necessary to protect the integrity of the aquifer..

**(5) Public Safety Issues:**

**A. Police Issues**

All of the safety design issues raised by the Police Chief must be carefully considered. A peer review consultant trained in Crime Prevention Through Environmental Design should be hired to review the design of the Project to make sure that appropriate measures to protect the safety of the future residents and area residents. A copy of the Chief's comments is attached hereto.

As noted by the Chief, landscaping should be carefully designed to provide appropriate screening for the Project, which proposes great density, without creating opportunities for acts of violence to occur. Similar, all entrances and all internal hallways should be carefully designed to promote the safety of the future residents.

In particular, each common element of each residential unit (i.e., floors, ceilings and walls that are shared with an adjacent unit) should be carefully designed and built to provide noise and vibration controls, to protect the quality of life of the residents and prevent conflicts between and among the residents in such a dense development.

In particular, the parking requirement under ZBL §139-18. of one space per bedroom should not be waived as inadequate parking can and will create public safety issues, as noted by the Chief. We note that the Project proposes to devote a large amount of ground area to an outdoor pool, which will reduce the available space for parking. Modifications to the Project must be required to provide for the required parking.

In particular, there must be on site recreational opportunities for children. The main form of recreation is a large outdoor pool area that will be available for recreation purposes only during a short portion of each calendar year. Only a very small play area is proposed. As noted by the Chief, the Project needs to provide areas where effective year-round recreation can take place. The children at the Project will need to be able have paved areas where balls can be bounced and grassy areas where balls can be tossed and a safe area for bike riding.

## **B. Fire Issues**

As noted by the Fire Chief, the Zoning Board of Appeals must make sure that all of the requirements of the new fire code (i.e., 527 CMR 18) are fully peer reviewed and fully satisfied. A copy of the Chief's comments is attached hereto.

Proper access for fire safety vehicles absolutely must be provided in order to protect both the future residents of the Project and the Town's public safety personnel. Failure to provide proper access to buildings will increase response time and allow dangerous conditions to develop that otherwise would be avoided.

The following issues must be carefully peer reviewed and the Project must be carefully conditions to address those issues:

- Public Emergency Access to the Project and the individual buildings must be provided and confirmed through computer modeling. All of the Chief's concerns about access to the Projects and the individual buildings must be fully satisfied. A copy of his comments is attached hereto.
- All Fire Code requirements shall be adhered to.
- Each parking space must be 22 feet long to avoid overhanging vehicles, as overhanging vehicles impair and slow emergency response efforts.
- There must be appropriate storage for residents' boats, either on site or off site, otherwise storage must be prohibited.
- Trees that will grow to block vertical access for emergency vehicles must be prohibited.
- Internal hydrants must be provided as recommended by the Chief. These hydrants must be required to be in place and charged with water when the framing of buildings begins.

## **(6) Design Issues.** As designed the Project is inappropriate

### **A. Density.**

The Town is well aware that 40B's typically exceed local zoning standards; however, the Project is entirely out of character with the surrounding

neighborhood. The Project proposes to cover the majority of the Property with buildings, parking areas, access areas, and a swimming pool (which will be unusable for the majority of the year). The application cites 30% open space, the majority of which is unusable as thin strips of ineffective buffer around the perimeter of the property or land shadowed by the bulky buildings. These factors, combined with the lack of buffers for the Project from adjacent residential properties and the massive bulk and height of the buildings proposed, the Project is completely incompatible with its setting. It's worth noting that the proposed scale of the Project, in a more appropriate location, could be acceptable with further design refinements.

The Project is wholly inconsistent with the development concepts established in the Town's 2009 Master Plan, as adopted and in active implementation by the Planning Board, Nantucket Planning & Economic Development Commission, BOS and Town Meeting.

The Applicant asserts (Application p. 32) that the "living space per acre" proposed by the Project is 28,921 s.f. per acre and that this density compares favorably with other "sustainable compact neighborhoods on the Nantucket, as illustrated in Exhibit F to the Application. The neighborhoods, however, that are illustrated in Exhibit F are all located within the Town Overly District and within the Town Sewer District, so they are connected to municipal water and sewer, and are more closely situated to high-density residential and commercial areas, including the downtown and mid-island.

The density for the LUG-2 zoning district in which the Property is primarily located requires a minimum lot size of 80,000 s.f. of area, allows up to two full-size dwellings and one accessory dwelling not exceeding 550 s.f., and a maximum ground cover ratio of 4% is permitted. Assuming full build-out of the Property under existing regulations, there would be three (3) dwelling units totaling 4,341 s.f. of ground cover, and containing approximately 10,853 s.f. of living space (4,341 x 2.5) equal to 1,736 s.f. of "living space per acre." The Project proposes 56 dwelling units totaling 24,676 (22.7%) s.f. of ground cover, and containing approximately 72,303 s.f. of living space, equal to 28,921 s.f. of "living space per acre". The Project includes 53 more dwelling units, 5.68 times as much ground cover, 6.66 times as much living space, and 16.66 times as much "living space per acre" as would be allowed under existing LUG-2 regulations.

Furthermore, only 100 parking spaces are proposed for 122 bedrooms, which is insufficient; and 122 are required and needed. The Project proposes a large area of the Property to be devoted to an outdoor pool area that would provide no benefit during most of the year to the residents. The Project needs to be redesigned to provide more parking and increase reasonable, year-round recreational, on-site opportunities and the density should be reduced.

## **B. Height.**

The height of the buildings proposed for the Project is wholly inappropriate for a rural Nantucket setting.

The Zoning Bylaw provides that no building (with limited exceptions in very specific and limited sections of Nantucket that are reserved for dense development) shall exceed 30 feet.

The Project proposes 4 residential buildings with a height of 44 feet and a fourth building with a height of 55 feet. This is totally out of character for Nantucket, generally, and should not be allowed. With the exception of utilitarian structures such as municipal or airport or other institutional buildings, fuel tanks, radio towers, and lighthouses, the only examples of commercial or residential buildings that are similar in scale are located within the downtown and mid-island commercial areas.

### **C. Aesthetics.**

The Project design is historically and contextually inappropriate and inconsistent with the well established guidelines of the Historic District Commission entitled “Building with Nantucket in Mind”.

The Project design resembles a dated, oversized resort that would typically be located in a highway oriented commercial strip on the mainland, accented with an oddly located pool at the center. In fact, it is exactly the type of development that the Country Overlay District specifically seeks to discourage and is contrary to the vision articulated throughout the Master Plan. The Project maximizes the use of three story balconies, a design feature which is unprecedented on Nantucket; and, furthermore, the balconies are located in such a way that they loom over adjacent residential properties and the Boy Scout Camp. There is no historic precedent for such a grouping of large scale buildings at an inland location.

In addition, two buildings would be within 10.6 feet of the front yard lot line and this is inappropriate in a location where the required front yard setback is 35 feet. The minimum side yard setback required is 15 feet; however, the proposed setback is as close as 5 feet and the dumpster appears to be located less than five feet from the lot line and in many places the setback from paved areas is less than five feet.

### **D. Town and Country Overlay District and 2009 Master Plan.**

The Project is wholly inconsistent with the Town’s Zoning and 2009 Master Plan.

Nantucket’s 2009 Master Plan was adopted by the Planning Board pursuant to MGL Chapter 41 section 81D. It was accepted by the Nantucket Planning & Economic Development Commission, Board of Selectmen and Town Meeting

(Article 26). The Master Plan was intended to be a 10 year document and it is actively referenced in over 100 zoning articles presented to Town Meeting over the past 6 years. There has been an effort to coordinate utilities with the zoning districts and to focus development around commercial nodes identified in Figure 15 of the 2009 Master Plan (page 46).

The Town and Country Overlay District concept was adopted by Town Meeting in 2001. In 2006 it was the subject of a survey distributed with the Annual Town Census. A total of 86% of respondents supported the creation of standards consistent with the Town and Country concepts. A non-binding 2006 ballot question was supported by 72% of the voters to “work to adopt additional standards consistent with the Town and Country concept”. In 2009, as part of the Master Plan, zoning was re-structured for consistency with these organizational principles which affect the long-term physical development of the island.

The Country Overlay District, under Section 139-12F of the Zoning Bylaw, has the following purpose:

“The purpose of the Country Overlay District is to discourage development and to preserve areas characterized by traditional and historic rural land use patterns; to discourage the spread of disperse development patterns that promote automobile dependency, and are costly to maintain. The purpose of the Country Overlay District shall be considered by the Planning Board or Zoning Board of Appeals when determining the character and extent of site and infrastructure improvements to be required in a decision on an application for site plan approval...”

Conversely, the purpose of the Town Overlay District is to limit the spatial extent of growth by encouraging development where existing infrastructure exists or can be extended without undue expense and to create affordable housing opportunities through infill development, and to create development patterns that are conducive to alternatives to the automobile.

The Project location is wholly out of character for Nantucket, generally, and the Zoning Board of Appeals needs to work with the Applicant to have the Project redesigned and reduced.

(7) **Other Important Issues.**

The Applicant must be required to analysis of pre and post-construction conditions and pre and post-construction drainage calculations and that a qualified professional engineer provides a report that compares and analyzes the pre and post construction conditions for the Property and all adjoining land and all relevant watershed areas.



The Applicant must be required to provide full stormwater drainage calculations (pre and post construction) to the ZBA and they shall be subjected to peer review at the Applicant's expense.

If the Applicant proposes to use pervious pavement for walkways and parking areas, then that, of course, could mitigate stormwater runoff concerns; however, if that approach is contemplated, there must be a proper operation and maintenance plan that provides for maintaining the pervious pavement, which would be a significant annual expense.

The Applicant must be required to provide drainage information for peer review that shall:

- a) be supported by adequate testing of the Property's soils, both as to percolation and permeability rates, and the location of seasonal high ground water levels;
- b) be required to undergo peer review by a drainage consultant hired by the Town at the Applicant's expense;
- c) be confirmed through peer review, before any approval can take place, to result in no net increase in the volume and rate of stormwater runoff from the Property, based upon drainage calculations that compare pre-construction and post-construction conditions;
- d) be confirmed, in particular, through peer review, to not result in any increase in the rate or volume of stormwater runoff from the Property or any change in the runoff from existing adjoining properties, when pre-construction and post-construction conditions are compared;
- e) include water control runoff from roofs of the dwellings and any accessory structures that are separate from and not combined with stormwater runoff from paved areas and not be introduced into any stormwater drainage basin;
- f) include operation and maintenance and replacement requirements for the access ways and stormwater drainage infrastructure; and

The Project must be required to include a sidewalk (at the Applicant's expense) to allow the future residents to reach the nearest bus stop to allow safe access for residents.

The Applicant must be required to provide a detailed trash removal and recycling plan that identifies the frequency of trash pickup, the dumpster locations, all trash policies and enforcement procedures. Any dumpsters must be located so as to not disturb any adjacent residential property.

The Applicant must be required to obtain and provide a report that provides an estimate of the anticipated school aged children in the Project, so that the Town can plan ahead to serve the children.

The Project must be conditioned so as to eliminate all balconies, which are entirely inappropriate.

If a connection to the water system is allowed, the Applicant must be required to perform all water capacity tests to verify and demonstrate that the Project will not adversely impact the public infrastructure or reduce the water pressure available to existing water users.

The Project should be designed and built so as to maximize energy efficiency in terms of building materials and heating and other infrastructure. That would reduce the cost to the residents and should not greatly increase the Applicant's costs to undertake the Project.

The Project must include internal and off-site sidewalk improvements so as to facilitate pedestrian access to nearby neighborhoods and public transportation facilities. Sidewalks should be constructed of brick, concrete or asphalt (or a combination thereof) and meet AASHTO standards where appropriate.

The Project must have adequate snow storage areas and a snow removal policy that provides for removal in the event of large or repetitive snow events.

We understand the Project will have sprinklers.

The Applicant must perform a traffic infrastructure study, which includes sight distance assessments, to evaluate any improvements that would be required to serve the traffic the Project proposes. This study, given the number of residents proposed to reside in the proposed development, must include an assessment of access to nearby commercial, community, and public transportation facilities. The Traffic Study must take the high tourist seasons into account and include the conflicts that arise from the high number of vehicles, pedestrians and bikers that compete for use of Nantucket's ways and the impact of proposed access points on existing residents and commercial property owners. The Applicant must be required to pay for traffic peer review.

The Applicant must provide a lighting plan, to provide safe lighting for residents, but without light intrusion onto adjacent properties.

The Board of Selectmen thanks the Zoning Board of Appeals for its hard work on this important matter. The Town reserves the right to comment on site control if information comes to its attention that merits additional comment.

Very truly yours,



Robert R. De Costa, Chairman



Matt Fee, Vice Chairman



Rick Atherton



Tobias Glidden



Dawn E. Hill-Holdgate

cc: Police Chief  
Fire Chief  
Director of Planning and Land Use Services  
Town Counsel  
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